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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194679
Party	Plaintiff John P. Avlon
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Date	08/14/2012
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/514,179
Published in the *Official Gazette* on December 29, 2009

JOHN PHILLIPS AVLON,
an individual

Opposer,

V.

Opposition No. 91194679

DEMARCUS FREEMON,
an individual

Applicant.

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S FOURTH NOTICE OF RELIANCE

Pursuant to 37 C.F.R. § 2.120(j) and TTAB Rule 704.10, Opposer, John P. Avlon, hereby submits, and gives notice of its reliance on, the following discovery pleadings:

Discovery Pleading	Trial Ex. No.
Applicant's Response to First Set of Admissions	41
Applicant's Response to First Set of Interrogatories	42
Applicant's Response to First Set of Requests for Production of Documents	43

Exhibits 41-43 contain admissions relevant to at least the similarity of the parties' marks, likelihood of confusion and Opposer's priority of use. The Exhibits are attached hereto.

Dated: August 14, 2012

Respectfully submitted,

JOHN PHILLIPS AVLON

By: /Robert Barz/
One of His Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing **OPPOSER'S FOURTH NOTICE OF RELIANCE** is being electronically served to Herbert T. Patty, Esq. at htpattylaw@gmail.com and deposited with the United States Postal Service with sufficient postage as first-class mail this 14th day of August 2012 in an envelope addressed to Applicant's counsel at:

Herbert T. Patty, Esq.
1625 The Alameda, Suite 508
San Jose, CA 95126

/Robert Barz/
Robert Barz, Esq.

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NOTICE OF RELIANCE

TRIAL EXHIBIT # 41

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
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3 In the matter of application Serial No. 77/514,179
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5 JOHN PHILLIPS AVLON,
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7 Opposer,

8 v.

9 DEMARCUS FREEMON,
10 an individual

11 Applicant.

12 United States Patent and Trademark Office
13 Trademark Trial and Appeal Board
14 P.O. Box 1451
15 Alexandria, VA 22313-1450

16 **APPLICANT'S RESPONSE TO FIRST SET OF ADMISSIONS**

17 **ADMISSION NO. 1**

18 Admit that Applicant is engaged in the business of providing electronic magazines and
19 articles.

20 **RESPONSE TO ADMISSION NO. 1**

21 Applicant does not concede that Applicant is engaged in the business of providing
22 electronic magazines and articles.

23 **ADMISSION NO. 2**

24 Admit that the services identified in Applicant's Application Serial No. 77/514,179 are
25 highly related to the services identified in Opposer's Application Serial No. 77/891, 121.

26 **RESPONSE TO ADMISSION NO. 2**

27 Applicant does not concede that the services identified in Applicant's Application Serial
28 No. 77/514,179 are highly related to the services identified in Opposer's Application Serial No.
77/891, 121.

1 **ADMISSION NO. 3**

2 Admit that Applicant's Application Serial No. 77/514, 179 was initially filed as an intent-
3 to-use application.

4 **RESPONSE TO ADMISSION NO. 3**

5 Applicant does not concede that Application Serial No. 77/514,179 was initially filed as
6 an intent-to-use application.

7 **ADMISSION NO. 4**

8 Admit that Applicant's Application Serial No. 77/514,179 was filed on July 3, 2008.

9
10 **RESPONSE TO ADMISSION NO. 4**

11 It is Applicant's present understanding that the Application Serial No. 77/514,179 was
12 filed on July 3, 2008.

13 **ADMISSION NO. 5**

14 Admit that Applicant did not use Applicant's Mark prior to July 3, 2008.

15 **RESPONSE TO INTERROGATORY NO. 5**

16 It is Applicant's present understanding that Applicant did not use Applicant's Mark prior
17 to July 3, 2008.

18
19 **ADMISSION NO. 6**

20 Admit that Opposer was the first to use the trademark "INDEPENDENT NATION" in
21 connection with the publication, including the electronic publication, of articles and blog
22 submissions.

23 **RESPONSE TO ADMISSION NO. 6**

24 Applicant does not concede that Opposer was the first to use the trademark
25 "INDEPENDENT NATION" in connection with the publication, including the electronic
26 publication, of articles and blog submissions.

27 **ADMISSION NO. 7**

28 Admit that Applicant's Mark is identical in sight and sound to Opposer's Mark.

1 **RESPONSE TO ADMISSION NO. 7**

2 Applicant does not concede that Applicant's Mark is identical in sight and sound to
3 Opposer's Mark.

4 **ADMISSION NO. 8**

5 Admit that Applicant and Opposer advertise, market, offer to sell and sell their respective
6 services and/or publications in the same channels of trade.

7 **RESPONSE TO ADMISSION NO. 8**

8 Applicant does not concede that Applicant and Opposer advertise, market, offer to sell
9 and sell.

10 **ADMISSION NO. 9**

11 Admit that Applicant was aware of Opposer's Mark when it filed Application Serial No.
12 77/514,179.

13 **RESPONSE TO ADMISSION NO. 9**

14 Applicant does not concede that Applicant was aware of Opposer's Mark when Applicant
15 filed Application Serial No. 77/514,179.

16 **ADMISSION NO. 10**

17 Admit that Applicant is aware of numerous instances of confusion between Applicant and
18 Opposer.

19 **RESPONSE TO ADMISSION NO. 10**

20 Applicant does not concede that Applicant was aware of numerous instances of confusion
21 between Applicant and Opposer.

22 **ADMISSION NO. 11**

23 Admit that persons have contacted Applicant believing that Applicant was the Opposer.

24 **RESPONSE TO ADMISSION NO. 11**

25 Applicant does not concede that persons have contacted Applicant believing that
26 Applicant was the Opposer.

1 DATED this 11th day of January, 2012.

2 Respectfully submitted,

3 DEMARCUS FREEMON

4 By: 

5 His Attorney

6 Herbert T. Patty, Esq.
7 1625 The Alameda, Suite 508
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Opposer's First Set of Requests for Admissions is being deposited with the United States Postal Service with sufficient postage as first-class mail that 11th day of January 2012 in an envelope addressed to Opposer's counsel at:

K&L GATES
70 West Madison Street
Suite 3100
Chicago, IL 60602-4207

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Opposition No. 91194679

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TRIAL EXHIBIT # 42

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5 JOHN PHILLIPS AVLON,
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7 Opposer,

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9 DEMARCUS FREEMON,
10 an individual

11 Applicant.

12 United States Patent and Trademark Office
13 Trademark Trial and Appeal Board
14 P.O. Box 1451
15 Alexandria, VA 22313-1450

16 **APPLICANT'S RESPONSE TO FIRST SET OF INTERROGATORIES**

17 **INTERROGATORY NO. 1:**

18 Identify each person who is or was responsible for, or was involved in, or has knowledge
19 of (a) the selection, creation, and adoption of Applicant's Mark; and (b) the advertising,
20 marketing and sale of any goods or services associated with the Applicant's Mark.

21 **RESPONSE TO INTERROGATORY NO. 1**

22 Applicant is the only person responsible for the selection, creation, and adoption of
23 Applicant's Mark as well as the advertising, marketing and sale of any goods or services
24 associated with Applicant's Mark.

25 **INTERROGATORY NO. 2:**

26 Describe in detail the duties of each person identified in response to each part of
27 Interrogatory No. 1, including his/her relationship to Applicant.
28

1 **RESPONSE TO INTERROGATORY NO. 2**

2 Applicant used his own creativity to select and create Applicant's Mark. Applicant
3 further used his creativity to devise an advertising and marketing plan to sell services associated
4 with Applicant's Mark.

5 **INTERROGATORY NO. 3**

6 Describe in detail how and why Applicant created, adopted and selected Applicant's
7 Mark.

8 **RESPONSE TO INTERROGATORY NO. 3**

9 In creating Applicant's Mark, Applicant was inspired by the Native Americans. In
10 particular, the tribal system which is indicative of many Native American nations is an
11 "Independent Nation" within the United States.

12 **INTERROGATORY NO. 4**

13 Identify each and every good, service and/or publication offered by Applicant at any time
14 bearing Applicant's Mark.

15 **RESPONSE TO INTERROGATORY NO. 4**

16 Refer to the Applicant's website, www.theindependentnation.com.

17 **INTERROGATORY NO. 5**

18 For each good, service and/or publication offered under Applicant's Mark, state on what
19 date the mark was first used, and describe the facts supporting that use, including a description of
20 the transaction, the dollar amount of that transaction, and all documents relating to the first use
21 date of Applicant's Mark.
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23 **RESPONSE TO INTERROGATORY NO. 5**

24 Applicant's plans to use the mark were thwarted by Opposer's filing of the current
25 Opposition proceeding.
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1 **INTERROGATORY NO. 6**

2 Identify each and every geographic location where any good, service and/or publication
3 has been offered or sold under Applicant's Mark and the first offer or sale date for each.

4 **RESPONSE TO INTERROGATORY NO. 6**

5 Applicant's plan to use the mark in connection with services were thwarted by Opposer's
6 filing of the current Opposition proceeding.

7 **INTERROGATORY NO. 7**

8 If Applicant is currently using Applicant's Mark, state whether Applicant intends to
9 expand the goods, services and/or publications, or the geographic area for which it uses
10 Applicant's Mark and how it intends to expand such use.

11 **RESPONSE TO INTERROGATORY NO. 7**

12 Currently, Applicant has suspended plans to use the mark in lieu of the present
13 Opposition proceeding.

14 **INTERROGATORY NO. 8**

15 State to the nearest thousands of dollars the worldwide and retail sales of any good,
16 service and/or publication bearing Applicant's Mark for each year in which such any good,
17 service and/or publication has been sold to the present.

18 **RESPONSE TO INTERROGATORY NO. 8**

19 Applicant has not realized any revenues from any worldwide and retail sales of any good,
20 service and/or publication bearing Applicant's Mark for each year in which such good, service
21 and/or publication has been sold to the present.

22 **INTERROGATORY NO. 9**

23 State whether Applicant has licensed or otherwise granted authority to any other person
24 to sell or distribute any good, service and/or publication under Applicant's Mark, and, if so,
25 provide the name and address of each licensee or grantee and a description of the goods or
26 services covered by the license or agreement.
27
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1 **RESPONSE TO INTERROGATORY NO. 9**

2 Applicant has not licensed or otherwise granted authority to any other person to sell or
3 distribute any good, service and/or publication under Applicant's Mark.

4 **INTERROGATORY NO. 10**

5 State whether any searches, surveys, marketing studies or reports of any kind have been
6 conducted or created by or on behalf of Applicant concerning or relating to Applicant's Mark or
7 the goods, services and/or publications sold under Applicant's Mark and identify the dates of
8 such searches, surveys, marketing studies or reports and any documents related thereto.

9 **RESPONSE TO INTERROGATORY NO. 10**

10 Applicant has only performed cursory web searches around the time period when the
11 Opposition proceeding was filed.

12 **INTERROGATORY NO. 11**

13 Describe in detail, Applicant's use of Applicant's Mark to date and/or its future plans to
14 use Applicant's Mark, including, but not limited to, the actual or anticipated geographic locations
15 of use, the actual or anticipated channels of trade, the actual or anticipated goods and services
16 offered.

17 **RESPONSE TO INTERROGATORY NO. 11**

18 Applicant's plan to use the mark in connection with services were thwarted by Opposer's
19 filing of the current Opposition proceeding. At this time, Applicant has yet to decide how
20 Applicant will use Applicant's Mark in the future.

21 **INTERROGATORY NO. 12**

22 State whether Applicant or any other party under his control ever has discussed or
23 received any correspondence concerning Opposer or Opposer's Mark with or from any person
24 including, but not limited to, actual or potential customers, competitors, and third parties, and, if
25 so, identify each discussion, correspondence, or document involved, including the participants
26 therein and the date and the subject matter thereof.

1 **RESPONSE TO INTERROGATORY NO. 12**

2 Neither Applicant nor any party under Applicant's control have ever discussed or
3 received any correspondence concerning Opposer or Opposer's Mark with customers,
4 competitors or third parties.

5 **INTERROGATORY NO. 13**

6 State whether Applicant was aware of Opposer's prior use of, ownership of, or
7 registrations for, Opposer's Mark at the time it adopted Applicant's Mark and identify the date
8 on which Applicant first learned of Opposer's Mark and the names of any agents or
9 representatives of Applicant who had knowledge of Opposer's Mark at the time Applicant filed
10 its application to register Applicant's Mark.

11 **RESPONSE TO INTERROGATORY NO. 13**

12 Applicant was made familiar of Opposer's domain name upon seeking registration of his
13 website. Prior to using Applicant's Mark, Applicant searched the trademark database hosted by
14 the United States Patents and Trademark Office (www.USPTO.gov) that neither application nor
15 registration existed for an "INDEPENDENT NATION" mark.

16 **INTERROGATORY NO. 14**

17 State whether Applicant is aware of, or is in possession of evidence of, instances of actual
18 confusion between Applicant's Mark and Opposer's Mark including, but not limited to,
19 misdirected mail or telephone calls. If so, identify the approximate date of each such instance,
20 the substance of the communication, the person or entity reporting or complaining of such
21 instance, the circumstances surrounding such instance, all persons having knowledge or claiming
22 to have knowledge of any such instance, and all documents which relate to any such instance.

23 **RESPONSE TO INTERROGATORY NO. 14**

24 Applicant is not familiar with any instances of actual confusion between Applicant's
25 Mark and Opposer's Mark including, but not limited to, misdirected mail or telephone calls.
26
27
28

1 DATED this 11th day of January, 2012.

2 Respectfully submitted,

3 DEMARCUS FREEMON

4 By: 
5 His Attorney

6 Herbert T. Patty, Esq.
7 1625 The Alameda, Suite 508
8 San Jose, CA 95126
9 Email: htpattylaw@gmail.com
10 Telephone: (408) 520-8701
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Opposer's First Set of Interrogatories is being deposited with the United States Postal Service with sufficient postage as first-class mail that 11th day of January 2012 in an envelope addressed to Opposer's counsel at:

K&L GATES
70 West Madison Street
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NOTICE OF RELIANCE

TRIAL EXHIBIT # 43

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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9 DEMARCUS FREEMON,
10 an individual

11 Applicant.

12 United States Patent and Trademark Office
13 Trademark Trial and Appeal Board
14 P.O. Box 1451
15 Alexandria, VA 22313-1450

16 **APPLICANT'S RESPONSE TO FIRST SET OF REQUESTS**
17 **FOR PRODUCTION OF DOCUMENTS**

18 **REQUEST NO. 1**

19 All documents concerning Applicant's selection, adoption, creation, proposed use or use
20 of Applicant's Mark, specifically including all documents and things that identify the person(s)
21 who conceived or created Applicant's Mark and actual or anticipated use of plans, business
22 proposals, and correspondence with actual or potential suppliers, distributors, manufacturers,
23 customers, or licensees.

24 **RESPONSE TO REQUEST NO. 1**

25 Applicant has not created documents concerning Applicant's selection, adoption,
26 creation, and proposed use or use of Applicant's Mark.

27 **REQUEST NO. 2**

28 All documents concerning Applicant's advertising, marketing and sale of any goods,
services and/or publications associated with Applicant's Mark, specifically including all
documents and things that identify the person(s) who was involved in advertising, marketing and
sale of goods, services and/or publications under Applicant's Mark.

1 **RESPONSE TO REQUEST NO. 2**

2 Applicant has not created any documents concerning Applicant's advertising, marketing
3 and sale of any goods, services and/or publications associated with Applicant's Mark.

4 **REQUEST NO. 3**

5 All documents concerning the date of first use of Applicant's Mark, including those
6 documents which:

- 7 a. Reflect the transaction in which Applicant's Mark was first used in commerce and
8 the dollar amount of that transaction; and
9 b. Identify the parties to that transaction.

10 **RESPONSE TO REQUEST NO. 3:**

11 Applicant has not created documents concerning the date of first use of Applicant's
12 Mark.

13 **REQUEST NO. 4**

14 All documents concerning Opposer's use of Opposer's Mark including, but not limited
15 to, any documents showing when Applicant first became aware of Opposer's Mark

16 **RESPONSE TO REQUEST NO. 4**

17 Applicant has not created any documents concerning Opposer's use of Opposer's mark.

18 **REQUEST NO. 5**

19 All documents evidencing each and every type of good, service and/or publications
20 offered, offered for sale or sold by Applicant at any time bearing Applicant's Mark.
21

22 **RESPONSE TO REQUEST NO. 5**

23 Applicant has not created any documents evidencing each and every type of good, service
24 and/or publications offered, offered for sale or sold by Applicant at any time bearing Applicant's
25 Mark.

26 **REQUEST NO. 6**

27 All documents evidencing the geographic areas in which Applicant has offered, marketed
28 or sold goods, services and/or publications under Applicant's Mark.

1 **RESPONSE TO REQUEST NO. 6**

2 Applicant has not created any type of documents evidencing the geographic areas in
3 which Applicant has offered, marketed or sold goods, services and/or publications under
4 Applicant's Mark.

5 **REQUEST NO. 7**

6 All documents evidencing the geographic areas in which Applicant intends to market or
7 offer goods, services and/or publications under Applicant's Mark.

8 **RESPONSE TO REQUEST NO. 7:**

9 Applicant has not created any documents intending to market or offer goods, services
10 and/or publications under Applicant's Mark.

11 **REQUEST NO. 8**

12 All documents reflecting in both units and dollar amounts the amount of goods, services
13 and/or publications offered or sold under Applicant's Mark for each year in which goods,
14 services and/or publications under Applicant's Mark have been offered or sold.

15 **RESPONSE TO REQUEST NO. 8**

16 Applicant has not created any documents reflecting the amount of goods, services and/or
17 publications offered or sold under Applicant's Mark for each year in which goods, services
18 and/or publications under Applicant's Mark have been offered or sold.

19 **REQUEST NO. 9**

20 All documents reflecting communications with Applicant concerning Opposer's Mark of
21 goods, services and/or publications offered under Opposer's Mark.

22 **RESPONSE TO REQUEST NO. 9**

23 Applicant has not created any documents reflecting communications with Applicant
24 concerning Opposer's Mark of goods, services and/or publications offered under Opposer's
25 Mark.

26 **REQUEST NO. 10**

1 All documents, including all files maintained by Applicant, concerning Opposer or any
2 goods, services and/or publications offered by Opposer's Mark.

3 **RESPONSE TO REQUEST NO. 10**

4 Applicant has not created any documents including all files maintained by Applicant,
5 concerning Opposer or any goods, services and/or publications offered by Opposer's Mark.

6 **REQUEST NO. 11**

7 All documents concerning any trademark searches or investigations conducted by
8 Applicant concerning Opposer's Mark.

9
10 **RESPONSE TO REQUEST NO. 11**

11 Applicant has not created any documents concerning any trademark searches or
12 investigations conducted by Applicant concerning Opposer's Mark. Applicant performed a
13 cursory web search in addition to the initial search on the United States Patent and Trademarks
14 website (www.USPTO.gov).

15 **REQUEST NO. 12**

16 All documents, including any trademark searches, concerning any investigation, research
17 or searching done regarding the availability of Applicant's Mark.

18 **RESPONSE TO REQUEST NO. 12**

19 Applicant has not created any documents including any trademark searches, concerning
20 any investigation, research or searching done regarding the availability of Applicant's Mark.
21 Applicant performed a cursory web search in addition to an initial search on the United States
22 Patent and Trademarks website (www.USPTO.gov).

23 **REQUEST NO. 13**

24 Samples of all advertising and promotional materials, including catalogs, Web pages,
25 circulars, leaflets, direct mailings, magazine advertisements, point of sale materials, and any other
26 materials used or proposed to be used by Applicant in connection with goods, services and/or
27 publications offered under Applicant's Mark.
28

1 **RESPONSE TO REQUEST NO. 13**

2 All advertising and promotional materials, including catalogs, Web pages, circulars,
3 leaflets, direct mailings, magazine advertisements, point of sale materials, and any other materials
4 used or proposed to be used by Applicant in connection with goods, services and/or publications
5 offered under Applicant's Mark, if any, is on Applicant's website: www.independentnation.com.

6 **REQUEST NO. 14**

7 Representative documents concerning the channels of trade in which Applicant sells or
8 plans to offer the goods, services and/or publications offered under the Applicant's Mark.

9 **RESPONSE TO REQUEST NO. 14**

10 Applicant has not created any documents concerning the channels of trade in which
11 Applicant sells or plans to offer the goods, services and/or publications offered under the
12 Applicant's Mark.

13 **REQUEST NO. 15**

14 Representative documents concerning the class or type of purchasers, customers or users
15 to which Applicant sells or plans to offer the goods, services and/or publications offered under
16 Applicant's Mark.

17 **RESPONSE TO REQUEST NO. 15**

18 Applicant has not created any documents concerning the class or type of purchasers,
19 customers or users to which Applicant sells or plans to offer the goods, services and/or
20 publications offered under Applicant's Mark.

21
22 **Question 16 was missing from Opposer's First Set of Requests for Production of
23 Documents.**

24 **REQUEST NO. 17**

25 All documents concerning communications with Applicant's agents regarding Opposer's
26 Mark or goods, services and/or publications offered under Opposer's Mark.

1 **RESPONSE TO REQUEST NO. 17**

2 Applicant has not created any documents concerning communications with Applicant's
3 agents regarding Opposer's Mark or goods, services and/or publications offered under Opposer's
4 Mark.

5 **REQUEST NO. 18**

6 All documents that refer or relate to any proposal or agreement to license or grant
7 authority to any person to use Applicant's Mark.

8 **RESPONSE TO REQUEST NO. 18**

9 Applicant has not created any documents that refer or relate to any proposal or agreement
10 to license or grant authority to any person to use Applicant's Mark.

11 **REQUEST NO. 19**

12 All documents evidencing any instances of confusion between Opposer's mark and
13 Applicant's Mark, including but not limited to letters, e-mails or notes from any misdirected
14 telephone calls.

15 **RESPONSE TO REQUEST NO. 19**

16 Applicant has not created any documents evidencing any instances of confusion between
17 Opposer's mark and Applicant's Mark, including but not limited to letters, e-mails or notes from
18 any misdirected telephone calls.

19 **REQUEST NO. 20**

20 All documents evidencing any preparations to use Applicant's mark, including
21 communications with actual or potential customers, competitors, and third parties, including
22 support services and vendors such as actual or potential suppliers, distributors, manufacturers,
23 customers, or licensees.

24 **RESPONSE TO REQUEST NO. 20**

25 Applicant has not created any documents evidencing any preparations to use Applicant's
26 mark, including communications with actual or potential customers, competitors, and third
27
28

1 parties, including support services and vendors such as actual or potential suppliers, distributors,
2 manufacturers, customers, or licensees.

3
4 DATED this 11th day of January, 2012.

5 Respectfully submitted,

6 DEMARCUS FREEMON

7 By: 

8 His Attorney

9 Herbert T. Patty, Esq.
10 1625 The Alameda, Suite 508
11 San Jose, CA 95126
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